

1 THOMAS L. SANSONETTI  
Assistant Attorney General  
2 Environment and Natural Resources Division  
United States Department of Justice  
3 Washington, D.C. 20530

4 ROBERT D. MULLANEY  
Environmental Enforcement Section  
5 Environment and Natural Resources Division  
United States Department of Justice  
6 301 Howard Street, Suite 1050  
San Francisco, California 94105  
7 Telephone: (415) 744-6491

8 DANIEL G. BOGDEN  
United States Attorney  
9 District of Nevada  
BLAINE T. WELSH  
10 Assistant United States Attorney  
Bar No. 4790  
11 333 Las Vegas Blvd. South, Suite 5000  
Las Vegas, Nevada 89101  
12 Telephone: (702) 388-6336  
Fax: (702) 388-6787

13 Attorneys for Plaintiff United States of America  
14

15 UNITED STATES DISTRICT COURT  
16 DISTRICT OF NEVADA

17	UNITED STATES OF AMERICA,	)	
18		)	
19	Plaintiff,	)	Civil No.
20		)	
21	v.	)	
22		)	
23	J. R. SIMPLOT COMPANY,	)	COMPLAINT FOR CIVIL PENALTIES
24		)	AND INJUNCTIVE RELIEF
25	Defendant.	)	
26		)	

1       The United States of America, by authority of the Attorney  
2 General of the United States and through the undersigned  
3 attorneys, acting at the request of the Administrator of the  
4 United States Environmental Protection Agency ("EPA"), files this  
5 complaint and alleges as follows:

6                               INTRODUCTION

7       1.     This is a civil action brought pursuant to Section  
8 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(b), for  
9 injunctive relief and the assessment of civil penalties against  
10 J. R. Simplot Company, doing business as Simplot Silica Products  
11 ("Simplot"), for violations of the Act, the federally-approved and  
12 federally-enforceable Nevada State Implementation Plan, and one or  
13 more permits issued by the Clark County Air Pollution Control  
14 District.

15       2.     Authority to bring this action is vested in the United  
16 States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519,  
17 and 42 U.S.C. § 7605.

18       3.     Notice of the commencement of this action has been  
19 given to the State of Nevada, as required by Section 113(b) of the  
20 Act, 42 U.S.C. § 7413(b).

21                               JURISDICTION

22       4.     This Court has jurisdiction over the subject matter of  
23 this action pursuant to Section 113(b) of the Act, 42 U.S.C.  
24 § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. The  
25 Court also has jurisdiction over the parties to this action.  
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1 areas meet the NAAQS, fail to meet the NAAQS, or cannot be  
2 classified due to insufficient data. Areas that meet the NAAQS  
3 for a particular pollutant are called "attainment" areas for that  
4 pollutant; areas that do not are called "nonattainment" areas.

5 11. The Simplot Plant is located in or near Overton, a city  
6 within Clark County, Nevada.

7 12. The Simplot Plant is located in an attainment area for  
8 SO<sub>2</sub>. 40 C.F.R. § 81.329.

9 13. Part C ("Prevention of Significant Deterioration of Air  
10 Quality" or "PSD") of Title I of the Act is designed to prevent  
11 the significant deterioration of air quality in attainment areas  
12 and sets out requirements for SIPs for attainment areas to enforce  
13 maintenance of the NAAQS. 42 U.S.C. §§ 7470-7491.

14 14. Section 165(a)(1) of the Act, 42 U.S.C. § 7475(a)(1),  
15 forbids the construction of major emitting facilities unless the  
16 owner or operator of the facility has obtained, prior to  
17 construction, a permit to construct that sets forth emission  
18 limitations for the facility. The term "major emitting  
19 facilities" includes sources with the potential to emit two  
20 hundred and fifty tons per year of any regulated pollutant. 42  
21 U.S.C. § 7479(1). The term "construction" is defined to include  
22 modifications which, among other things, increase the amount of  
23 any air pollutant emitted by the facility. 42 U.S.C.  
24 §§ 7479(2)(c) and 7411(a)(4).

25 15. The Simplot Plant is a "major emitting facility" as  
26 defined in 42 U.S.C. § 7479(1).

1        16. Section 165(a)(4) of the Act, 42 U.S.C. § 7475(a)(4),  
2 requires major emitting facilities to control regulated pollutants  
3 with the "best available control technology" ("BACT").

4        17. Section 110(a) of the Act, 42 U.S.C. § 7410(a),  
5 requires each state to submit to EPA for approval a plan that  
6 provides for the implementation, maintenance, and enforcement of  
7 the NAAQS in each air quality control region in the state. This  
8 plan is known as a State Implementation Plan ("SIP").

9        18. Section 110(a)(2)(c) of the Act, 42 U.S.C.  
10 § 7410(a)(2)(c), requires that each SIP include a PSD permit  
11 program as provided in Part C of Title I of the Act, 42 U.S.C.  
12 §§ 7470-7491.

13        19. Section 161 of the Act, 42 U.S.C. § 7471, requires each  
14 SIP to contain "emissions limitations and such other measures as  
15 may be necessary . . . to prevent significant deterioration of air  
16 quality" in attainment and unclassifiable areas. Federal  
17 regulations prescribe the minimum content of the portions of the  
18 SIP setting out a state's PSD program. 40 C.F.R. § 51.166.

19        20. The State of Nevada submitted, and EPA approved, the  
20 portions of the Nevada SIP that contain the Clark County PSD  
21 program, including the requirements for obtaining, prior to  
22 construction, an Authority to Construct Certificate ("ATC") in  
23 Clark County. 40 C.F.R. §§ 52.1470 and 1472. 47 Fed. Reg. 26,621  
24 (June 21, 1982).

25        21. The following portions of the District Board of Health  
26 of Clark County ("District") Air Pollution Control Regulations

1 ("Clark County SIP Regulations"), as approved by EPA, are part of  
2 the federally-approved and federally-enforceable Nevada SIP:  
3 Section 1 (Definitions), Section 15 (Source Registration), and  
4 Section 16 (Operating Permits). 40 C.F.R. §§ 52.1470, 52.1472,  
5 and 52.1485. 46 Fed. Reg. 21,758 (April 14, 1981); 47 Fed. Reg.  
6 26,621 (June 21, 1982); 47 Fed. Reg. 26,386 (June 18, 1982).

7 22. Clark County SIP Regulations § 15.1 requires any person  
8 who causes "the emission of air contaminants" to register with the  
9 Control Officer and to provide a "description of the specific  
10 nature and quantity of the air contaminants emitted."

11 23. Clark County SIP Regulations § 15.4 requires those who  
12 register under Clark County SIP Regulations § 15.1 to notify the  
13 Control Officer of any significant change in any information  
14 furnished to the Control Officer.

15 24. Section 15.6.1 of the Clark County SIP Regulations  
16 provides that no person shall install or construct any new  
17 stationary source unless an ATC therefor has been issued by the  
18 Control Officer.

19 25. Clark County SIP Regulations § 15.6.3.5 requires the  
20 District to notify "the U.S. Environmental Protection Agency of  
21 each action taken under 15.6.3." In addition, that regulation  
22 requires that copies of applications, "review reports, conditions  
23 of approval, and operating permit conditions shall be . . . sent  
24 to the . . . EPA."

25 26. The signature of the applicant on an ATC application  
26 constitutes "an agreement that the applicant shall assume

1 responsibility for the capability of the new source and/or control  
2 device to comply with the regulations when in operation." Clark  
3 County SIP Regulations § 15.6.1.4.

4 27. Section 15.13.9.1 of the Clark County SIP Regulations  
5 provides that "[a] stationary source or modification shall meet  
6 all applicable emissions limitations in these regulations."

7 28. Section 15.13.9.2 of the Clark County SIP Regulations  
8 provides that "[a] new or modified stationary source shall apply  
9 best available control technology for each pollutant subject to  
10 these regulations."

11 29. Under Clark County SIP Regulations § 15.13.13, the  
12 owner or operator of a source or modification must submit, among  
13 other things, "[a] detailed description as to what system of  
14 continuous emissions reduction is planned for the source or  
15 modification, emissions estimates, and any other information  
16 necessary to determine that best available control technology  
17 would be applied."

18 30. Section 16.2 of the Clark County SIP Regulations  
19 provides that "[n]o person shall cause, suffer, or allow the  
20 operation of any source of air contaminant . . . unless an  
21 Operating Permit(s) have been issued by the Control Officer, and  
22 such permit is current and valid."

23 31. Clark County SIP Regulations § 16.5.1 states that a  
24 violation of a permit condition is a violation of Section 16.

1 FACTUAL BACKGROUND

2 32. At all relevant times, Simplot mined silica sand at  
3 unpatented mining claims several miles from the Simplot Plant.  
4 The mined sand is mixed with water and fed through a slurry  
5 pipeline from the mine to the Simplot Plant. At the Simplot  
6 Plant, the sand is dried with the aid of a coal-fired dryer and is  
7 then stored in silos until it is shipped for sale.

8 33. The Simplot Plant is a stationary source of air  
9 contaminants subject to the Clark County SIP Regulations.

10 34. At all relevant times, Simplot was the owner and  
11 operator of the Simplot Plant.

12 35. Simplot applied for an ATC in 1982. The Simplot Plant  
13 was increasing production, and Simplot intended to replace three  
14 oil-fired dryers with one coal-fired dryer. Because the physical  
15 changes would have increased the potential to emit ("PTE") of  
16 oxides of nitrogen ("NO<sub>x</sub>") and could have increased the PTE of  
17 particulates and SO<sub>2</sub>, an ATC was required.

18 36. In its review of the 1982 ATC application, the Clark  
19 County Air Pollution Control District ("APCD") determined that an  
20 emission control device known as a "cyclone scrubber" using lime  
21 water would achieve an 85 percent control efficiency in removing  
22 SO<sub>2</sub> emissions. In addition, it concluded that a combination of a  
23 cyclone scrubber and another emission control device known as a  
24 "baghouse" would control 99.8 percent of particulate emissions.  
25 According to the APCD's review of Simplot's ATC applications, the  
26 APCD considered these two controls to be BACT for these



1 pollutants. The APCD estimated that the coal-fired dryer with the  
2 scrubber would emit 13.7 pounds per hour (59.9 tons per year) of  
3 SO<sub>2</sub>, assuming a throughput of 200 tons per hour of silica sand and  
4 a coal-burning rate of 2.4 tons per hour with 1 percent sulfur  
5 coal.

6 37. In 1982, the APCD issued ATC number A13806 to Simplot  
7 to install the coal-fired dryer and control equipment. The ATC  
8 limited the throughput of silica sand to 200 tons per hour, the  
9 throughput of coal to 2.4 tons per hour, and required that the pH  
10 of the lime water in the scrubber be kept at a minimum of 9.0 to  
11 maintain its control efficiency.

12 38. By signing the ATC application, Simplot assumed  
13 responsibility for the capability of the control device to comply  
14 with the Clark County SIP Regulations when the device was in  
15 operation. See Clark County SIP Regulations § 15.6.1.4.

16 39. Simplot operated the coal-fired dryer with the scrubber  
17 and baghouse controls for several years but encountered corrosion  
18 and other problems with the scrubber and the baghouse. In August  
19 1988, Simplot submitted a second ATC application. In that  
20 application, Simplot proposed to remove the baghouse and install a  
21 different type of scrubber known as a "Venturi scrubber".

22 40. In October 1988, Simplot submitted a modified ATC  
23 application, proposing to rebuild the baghouse for the coal-fired  
24 dryer and to remove the scrubber entirely.

25 41. In the October 1988 ATC application, Simplot claimed it  
26 would attain BACT for SO<sub>2</sub> by using only low-sulfur coal

1 (containing less than 0.6 percent sulfur) and by relying on the  
2 "intrinsic removal function in the dryer drum," in effect stating  
3 that the production process itself would achieve an 80 percent  
4 control efficiency of SO<sub>2</sub> emissions from the dryer even without  
5 the operation of the scrubber. In the October 1988 ATC  
6 application, Simplot estimated, assuming 80 percent control  
7 efficiency of SO<sub>2</sub> emissions, that the removal of the scrubber  
8 would increase SO<sub>2</sub> emissions at the Simplot Plant by 21 tons per  
9 year ("tpy") from 63 to 84 tpy.

10 42. The APCD did not prepare a technical support document  
11 for the revised ATC applications, reviewing and analyzing whether  
12 the applications complied with applicable regulations, as is  
13 normally the case to justify decisions on such matters. Nor did  
14 the APCD follow Clark County SIP Regulations that require the APCD  
15 to send EPA copies of the applications, the proposed ATC, or any  
16 other documents relating to the ATC applications.

17 43. The APCD issued a new ATC to Simplot in December 1988.  
18 The APCD did not send a copy of the issued ATC to EPA. The ATC  
19 limited the throughput of silica sand to 200 tons per hour,  
20 limited the coal-burning rate to 2.4 tons per hour, limited the  
21 sulfur content of the coal to 1 percent, and set a new limit of  
22 19.2 pounds per hour for SO<sub>2</sub> emissions, which equates to  
23 approximately 84 tpy.

24 44. In 1994, Simplot conducted a test of the pollutants  
25 emitted from the Simplot Plant. The test results indicated that  
26 the Simplot Plant was achieving only 17.7 percent control

1 efficiency of SO<sub>2</sub> emissions, not the 80 percent control efficiency  
2 stated in Simplot's October 1988 modified ATC application.

3 45. Simplot did not notify the APCD of these 1994 test  
4 results.

5 46. In November 1995, the APCD asked Simplot to conduct a  
6 performance test on the Simplot Plant.

7 47. In August 1996, Simplot submitted an ATC application to  
8 show the allowable emissions and PTE for each emission unit at the  
9 Simplot Plant.

10 48. The 1996 ATC application included the results of an  
11 April 1996 performance test conducted on the coal-fired dryer.

12 49. The results of the 1996 source test showed that Simplot  
13 achieved only 26 percent control efficiency for SO<sub>2</sub> emissions  
14 removal. These test results confirmed that Simplot's October 1988  
15 ATC application, which had assumed an 80 percent control  
16 efficiency for SO<sub>2</sub> emissions without the scrubber, was incorrect.  
17 Assuming a 26 percent control efficiency, the potential to emit  
18 SO<sub>2</sub> under the 1988 ATC was 310.8 tpy.

19 50. In May 1997, the APCD issued a revised ATC to Simplot.  
20 No technical support document was prepared for the revised ATC,  
21 again departing from the APCD's normal practice. No documents  
22 relating to the ATC were submitted to EPA, in contravention of a  
23 requirement of the Clark County SIP Regulations.

24 51. The 1997 ATC contained many of the same conditions as  
25 the 1988 ATC other than limiting sulfur content of the coal to 0.6  
26 percent. The 1997 ATC included a PTE of 84.1 tpy for SO<sub>2</sub>

1 emissions from the dryer and set an allowable emissions of 84.1  
2 tpy. This is equivalent to 19.2 pounds per hour. Simplot agreed  
3 to the ATC conditions on May 19, 1997.

4 52. In May 1997, the APCD also issued to Simplot an  
5 operating permit with conditions. The operating permit provides  
6 that the PTE for the dryer is 84.1 tpy of SO<sub>2</sub> emissions and sets  
7 an allowable emissions limit at that same level of 84.1 tpy of  
8 SO<sub>2</sub>. The operating permit was not submitted to EPA. Simplot  
9 agreed to the terms of the operating permit on June 20, 1997.

10 53. Assuming a 26 percent control efficiency, Simplot's  
11 potential to emit SO<sub>2</sub> under the 1997 ATC and operating permit is  
12 186.6 tpy.

13 54. Pursuant to Section 113(b) of the Act, 42 U.S.C.  
14 § 7413(b), EPA may commence a civil action for injunctive relief  
15 and civil penalties not to exceed \$25,000 per day for violations  
16 of the Act, including SIP violations. Pursuant to Pub. L. 104-134  
17 and 40 C.F.R. §§ 19.2, 19.4 (Table), civil penalties of up to  
18 \$27,500 per day per violation may be assessed for violations  
19 occurring after January 30, 1997.

20 **FIRST CLAIM FOR RELIEF**  
21 **(Failure to Apply BACT)**

22 55. Paragraphs 1 through 54 of the Complaint are  
23 incorporated herein by reference as if fully set forth below.

24 56. From the date that Simplot removed the scrubber from  
25 the Simplot Plant up to and including the present time, Simplot  
26 has failed to apply BACT at the Simplot Plant.

1        57. By failing to apply BACT to the Simplot Plant, Simplot  
2 violated and is continuing to violate Clark County SIP Regulations  
3 § 15.13.9.2 and the Act, and is subject to suit pursuant to  
4 Section 113(b) of the Act, 42 U.S.C. § 7413(b).

5        58. Unless restrained by an order of the Court, Simplot  
6 will continue to violate the Nevada SIP and the Act. Pursuant to  
7 Section 113(b) of the Act, 42 U.S.C. § 7413(b), the United States  
8 is entitled to injunctive relief against Simplot for its  
9 continuing violations of the Nevada SIP and the Act.

10       59. Pursuant to Section 113(b) of the Act, 42 U.S.C.  
11 § 7413(b), Pub. L. 104-34, and 40 C.F.R. §§ 19.2, 19.4 (Table),  
12 Simplot is liable for a civil penalty of up to \$25,000 per day for  
13 each violation of the Act occurring through January 30, 1997, and  
14 a civil penalty of up to \$27,500 per day for each violation  
15 occurring after January 30, 1997.

16                    **SECOND CLAIM FOR RELIEF**  
17                    **(Operating Without a Valid Operating Permit)**

18       60. Paragraphs 1 through 54 of the Complaint are  
19 incorporated by reference as if fully set forth below.

20       61. At all mentioned times, Section 16.2 of the Clark  
21 County SIP Regulations required Simplot to have a current, valid  
22 operating permit in order to operate the Simplot Plant.

23       62. At all mentioned times, Section 16.1 of the Clark  
24 County SIP Regulations authorizes issuance of operating permits  
25 solely to facilities in compliance with the Clark County SIP  
26 Regulations and federal regulations.

1       63. Based on information and belief, Simplot had no  
2 operating permit until May 1997.

3       64. The operating permit issued in May 1997 to Simplot for  
4 the Simplot Plant was at all times invalid because it did not  
5 require Simplot to comply with BACT for SO<sub>2</sub> emissions; it did not  
6 take into account Simplot's test results showing, at best, 26  
7 percent control efficiency; and it was issued without compliance  
8 with the procedures mandated in the Clark County SIP Regulations.

9       65. Simplot has operated and continues to operate the  
10 Simplot Plant without a valid operating permit.

11       66. Because it operated and continues to operate the  
12 Simplot Plant without a valid operating permit, Simplot violated  
13 Clark County SIP Regulations § 16.2 and is subject to suit  
14 pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

15       67. Unless restrained by an order of the Court, Simplot  
16 will continue to violate the Nevada SIP and the Act. Pursuant to  
17 Section 113(b) of the Act, 42 U.S.C. § 7413(b), the United States  
18 is entitled to injunctive relief against Simplot for its  
19 continuing violations of the Nevada SIP and the Act.

20       68. Pursuant to Section 113(b) of the Act, 42 U.S.C.  
21 § 7413(b), Pub. L. 104-34, and 40 C.F.R. §§ 19.2, 19.4 (Table),  
22 Simplot is liable for a civil penalty of up to \$25,000 per day for  
23 each violation of the Act occurring through January 30, 1997, and  
24 a civil penalty of up to \$27,500 per day for each violation  
25 occurring after January 30, 1997.

26

**THIRD CLAIM FOR RELIEF**  
**(Failure to Comply with Regulations)**

69. Paragraphs 1 through 54 are incorporated herein by reference as if fully set forth below.

70. In August 1996, Simplot submitted to the APCD an application for an ATC.

71. In the 1996 application, Simplot represented that the Simplot Plant's projected control efficiency for SO<sub>2</sub> was 80 percent.

72. Pursuant to Clark County SIP Regulations § 15.6.1.4, the application constituted an agreement that Simplot "shall assume responsibility for the capability of the new source and/or control device to comply with the regulations when in operation." Clark County SIP Regulation § 15.6.1.4.

73. Simplot violated Clark County SIP Regulation § 15.6.1.4 by operating a source that did not have a control efficiency for SO<sub>2</sub> of 80 percent as represented and did not comply with Clark County SIP Regulations, including the requirement to apply BACT.

74. Unless restrained by an order of the Court, Simplot will continue to violate the Nevada SIP and the Act. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the United States is entitled to injunctive relief against Simplot for its continuing violations of the Nevada SIP and the Act.

75. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), Pub. L. 104-34, and 40 C.F.R. §§ 19.2, 19.4 (Table),

1 Simplot is liable for a civil penalty of up to \$25,000 per day for  
2 each violation of the Act occurring through January 30, 1997, and  
3 a civil penalty of up to \$27,500 per day for each violation  
4 occurring after January 30, 1997.

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiff, United States of America, prays for the  
7 following relief:

8 1. For a civil penalty of not more than \$25,000 per day for  
9 each violation of the Act and the Nevada SIP as alleged herein  
10 occurring through January 30, 1997, and a civil penalty of up to  
11 \$27,500 per day for each violation occurring after January 30,  
12 1997;

13 2. For an injunction requiring Simplot to install air  
14 pollution control equipment at the Simplot Plant to achieve SO<sub>2</sub>  
15 emissions reductions equal to or greater than the emissions  
16 reductions that would be achieved by BACT;

17 3. For costs and disbursements incurred in this action; and  
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1 4. For such relief as this Court deems just and proper.

2  
3 Respectfully submitted,

4 THOMAS L. SANSONETTI  
5 Assistant Attorney General  
6 Environment and Natural Resources  
7 Division

8 Dated: \_\_\_\_\_

9 W. BENJAMIN FISHEROW  
10 Deputy Chief  
11 Environmental Enforcement Section  
12 Environment and Natural Resources  
13 Division  
14 U.S. Department of Justice

15 DANIEL G. BOGDEN  
16 United States Attorney

17 Dated: \_\_\_\_\_

18 BLAINE T. WELSH  
19 Assistant United States Attorney  
20 District of Nevada

21 Of Counsel:

22 Arthur Haubenstock  
23 Assistant Regional Counsel  
24 U.S. Environmental Protection Agency  
25 75 Hawthorne Street  
26 San Francisco, California 94105